

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DAVID JUAN MERRITT,

Petitioner,

v.

2:06 CV 32
(Maxwell)

DOMINIC GUTIERREZ,

Respondent.

ORDER

It will be recalled that on March 16, 2006, *pro se* Petitioner David Juan Merritt instituted the above-styled civil action by filing a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and a Memorandum Of Law in support thereof.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

On May 10, 2006, United States Magistrate Judge John S. Kaull issued an Opinion/ Report And Recommendation wherein he recommended that the Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 be denied and dismissed with prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the Petitioner with ten (10) days from the date of said Opinion/Report And Recommendation in which to file objections thereto and advised the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

On May 17, 2006, the Petitioner's Traverse Reply To The Opinion/Report And

Recommendation That Petitioner's § 2241 Petition Be Denied And Dismissed was filed with the Court (See Docket No. 7).

Upon an independent *de novo* consideration of all matters now before the Court, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ Of Habeas Corpus Pursuant to 28 U.S.C. § 2241 were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Petitioner's Traverse Reply To The Opinion/Report And Recommendation That Petitioner's § 2241 Petition Be Denied And Dismissed, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action.

Accordingly, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on May 10, 2006, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED** and **DISMISSED**, with **prejudice**, and **STRICKEN** from the Court's docket.

In light of the denial and dismissal of the Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, it is further

ORDERED that the Petitioner's Motion Of Instanter To Request Ruling On Pending Petition For Writ Of Habeas Corpus Pursuant To 28 U.S.C. § 2241 Under The "Savings Clause" Provision Of 28 U.S.C. § 2255 (Docket No. 8) be, and the same is hereby **DENIED as moot**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner.

ENTER: August 24th, 2007


United States District Judge